



Request for City Council Committee Action From the Department of Public Works

Date: February 12th, 2013

To: Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

Subject: Utility Agreement with UTEC Associates, LLP.

Recommendation:

Authorize the appropriate City Officers to negotiate terms and conditions and to execute a final agreement with UTEC Associates, LLP., regarding the City's retention of easement rights and commitments by the Developer.

Previous Directives:

- June 13th, 1968, Vacation of 13th Ave SE.
- September 27th, 1968, Approval of Easement Deed from Special School District No. 1.

Prepared by: Paul Miller, Project Manager, 673-3603
Dennis Morris, Right of Way Specialist, 673-3607

Approved by:

Steven A. Kotke, P.E., City Engineer, Director of Public Works

Presenters: Paul Miller, Project Manager, Department of Public Works, TP&E

Reviews

Permanent Review Committee (PRC):	Approval	NA	Date
Civil Rights Affirmative Action Plan	Approval	NA	Date
Policy Review Group (PRG):	Approval	NA	Date

Financial Impact (Check those that apply)

- ☒ No financial impact - or - Action is within current department budget (If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☐ Business Plan: ☒ Action is within the plan. ☐ Action requires a change to plan.
- ☐ Other financial impact (Explain):

— Request provided to department's Finance Dept. contact when provided to the Committee Coordinator

Community Impact

Neighborhood Notification: Not Applicable

City Goals: A SAFE PLACE TO CALL HOME: the city's infrastructure will be well-maintained, people will feel safe in the city.

Comprehensive Plan: Not Applicable

Zoning Code: Not Applicable

Background/Supporting Information

UTEC Associates, LLP ("Developer") has presented the City with a development proposal for the property at 1313 5th St. SE. This is the former Marshall High School building which has been converted to office use. The Developer proposes to demolish this structure and build a larger structure in its place.

In 1968 the School District petitioned the City to vacate 13th Ave SE between 6th and 5th St's SE. There was (and still is) a 42 inch storm drain which runs through the street. As a condition of the vacation, the School District granted the City an easement for the utility. The utility is currently located under a surface parking lot.

The Developers proposed improvements would place the new structure over the existing utility. The City and the Developer have looked at possibly rerouting of the utility, but because of its size and capacity the best solution is to allow the structure over the utility while maintaining the City's ability to access the utility for repairs.

The City will retain its original easements rights to the utility, but we will require the Developer to execute a new agreement in which the Developer must do each of the following:

- Assume responsibility for construction and costs associated with reconstruction of the pipe and its appurtenances.
- Construct the new utilities according to the City's timeline.
- Construct the new utilities according to City standards and design approvals.
- Provide a warranty as to design and workmanship.
- Indemnify the City against any liability associated with construction and/or potential nuisances or harms arising out of the location of Developer's structure on the easement area.
- Acknowledge that Developer's structure on the easement area will not affect the City's future rights in and to the easement.
- Record the agreement against the property.
- Any structure built on the easement area will be deemed a permitted encroachment and thus will not diminish the city's easement rights, including the ultimate authority to order the structure removed for a public good purpose.

Public Works is seeking Council approval to execute and enter into the agreement.

Attachments: Site Plan Map with Easement location